

“Divorce is only permissible twice, then keep them in good fellowships or let them go with kindness.<sup>23</sup> So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until she marries another husband and he divorces her”.<sup>24</sup>

According to the above verses, intervening marriage is necessary if *talaq* takes place in the form of *bidyat*. But as the Ordinance makes no difference among various forms of *talaq*, statutory provision has been made that the couple whose *talaq* has become effective in the mode prescribed by section 7 may remarry without any intervening marriage. Under this section an intervening marriage is necessary only in case of triple divorce and after the effectiveness of the third divorce. This Ordinance, therefore, has brought a substantial change in the Muslim law in the name of consolidation of Muslim marriages and giving effect to the recommendations of the Commission on Marriage and Family Laws.

<sup>23</sup> *Al-Quran*, 2: 229.

<sup>24</sup> *Al-Quran* 2 : 230.

## Chapter Twenty Four

### The Muslim Marriages and Divorces (Registration) Act, 1974

(Act LII of 1974)

An Act to consolidate and amend the law relating to Registration of Muslim marriages and divorces.

Whereas it is expedient to consolidate and amend the law relating to registration of Muslim marriages and divorces;

It is hereby enacted as follows:-

#### 1. Short title and application

- (1) This Act may be called the Muslim Marriages and Divorces (Registration) Act, 1974.
- (2) It applies to all Muslim citizens of Bangladesh wherever they may be.

#### 2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

- (a) “Inspector-General of Registration” and “Registrar” respectively mean the officer so designated under the Registration Act, 1908 (XVI of 1908);
- (b) “prescribed” means prescribed by rules made under this Act.

#### 3. Registration of marriages

Notwithstanding anything contained in any law, custom or usage, every marriage solemnized under Muslim law shall be registered in accordance with the provisions of this Act.

#### 4. Nikah Registrars

For the purpose of registration of marriages under this Act, the Government shall grant licences to such number of persons, to be called Nikah Registrars, as it may deem necessary for such areas as it may specify;

### 300 The Muslim Marriages and Divorces (Registration) Act, 1974

Provided that not more than one Nikah Registrar shall be licensed for any one area: Provided further that the Government may, whenever it deems fit so to do, extend, curtail or otherwise alter the limits of any area for which a Nikah Registrar has been licensed.

#### 5. Marriage not solemnized by Nikah Registrars to be reported to them

- (i) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Act, be reported to him by the person who has solemnized such marriage.
- (ii) Whoever contravenes the provision of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred taka, or with both.

#### 6. Registration of divorces

- (i) Nikah Registrar may register divorce effected under Muslim Law within his jurisdiction on application being made to him for such registration.
- (ii) An application for registration of a divorce shall be made orally by the person or persons who has or have effected the divorce; Provided that if the woman be a *parda-nashin*, such application may be made by her duly authorised vakil.
- (iii) The Nikah Registrar shall not register a divorce of the kind known as *Talaq-i-tafweez* except on the production of a document registered under the Registration Act, 1908 (XVI of 1908), by which the husband delegated the power of divorce to the wife or of an attested copy of an entry in the register of marriages showing that such delegation has been made.
- (iv) Where the Nikah Registrar refuses to register a divorce, the Person or persons who applied for such registration may, within thirty days of such refusal, prefer an appeal to the Registrar and the order passed by the Registrar on such appeal shall be final.

#### 7. Manner of registration

The Nikah Registrar shall register a marriage or divorce in such manner as may be prescribed.

#### 8. Registers

Every Nikah Registrar shall maintain separate registers of marriages and divorces in such forms as may be prescribed and all entries in each such register shall be numbered in a consecutive series, a fresh series being commenced at the beginning of each year.

#### 9. Copies of entry to be given to parties

On completion of the registration of any marriage or divorce the Nikah Registrar shall deliver to the parties concerned an attested copy of the entry in the register, and for such copy no charge shall be made.

#### 10. Superintendence and control

- (i) Every Nikah Registrar shall perform the duties of his office under the superintendence and control of the Registrar.
- (ii) The Inspector-General of Registration shall exercise a general superintendence over offices of all Nikah Registrars.

#### 11. Revocation or suspension of a licence

If the Government is of the opinion that a Nikah Registrar is guilty of any misconduct in the discharge of his duties or has become unfit or physically incapable to discharge his duties, it may, by order in writing, revoke his licence, for such period, not exceeding two years, as may be specified in the order:

Provided that no such order shall be made unless the Nikah Registrar has been given a reasonable opportunity of showing cause why order should not be made.

#### 12. Custody of Registers

Every Nikah Registrar shall keep safely each register maintained by him under section 8 until the same is filled, and shall then or earlier if he leaves the district or ceases to hold a licence, make over the same to the Registrar for safe custody.

**13. Inspection of registers**

Any person may, on payment of the prescribed fee, if any, inspect at the office of the Nikah Registrar or of the Registrar any register kept in such office or obtain a copy of any entry therein,

**14. Power to make rules**

- (i) The Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act.
- (ii) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-
  - (a) qualifications to be required from persons to whom licences under section 4 may be granted;
  - (b) fees payable to a Nikah Registrar for registration of a marriage or divorce;
  - (c) any other matter for which rules are required to be made.

**15. Amendment of Muslim Family Laws Ordinance, 1961 (VIII of 1961).- In the Muslim Family Laws Ordinance, 1961 (VIII of 1961):-**

- (a) in section 3, in sub-section (1), the comma and words, "and the registration of Muslim marriages shall take place only in accordance with those provisions" shall be omitted;
- (b) section 5 shall be omitted;
- (c) in section 6, in sub-section (1), for the words "under this Ordinance" the words, comma figures and brackets "under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)" shall be substituted.

**16. Repealed**

The Muslim Divorces Registration Act, 1876 (Ben. Act I of 1876), is hereby repealed.

**17. Provision relating to existing Nikah Registrars—**

All Nikah Registrars licensed under the Muslim Family Laws Ordinance, 1961 (VIII of 1961), before the commencement of this

Act, shall be deemed to have been licensed as Nikah Registrars under this Act.

**Commentaries**

The main objective behind the enactment of the Muslim Marriages and Divorces (Registration) Act, 1974 is to consolidate and amend existing laws relating to registration of Muslim marriages and divorces. Section 3 of the Act provides that every marriage solemnized under Muslim law shall be registered in accordance with the provisions of the Act and no law, custom or usage can stand in the way of such registration. For the purpose of such registration, the Government shall grant licenses to the Nikah registrars for such areas as it may specify. Section 5 of the Act also provides that every marriage not solemnized by the Nikah Registrar is required to be reported to him by the person solemnizing such marriage for the purpose of registration. Any violation of this provision has been made punishable with simple imprisonment for a term which may extend to three months or with fine up to five hundred taka or with both.

The Commission on Marriage and Family Laws, 1955 also laid much stress on registration of Muslim Marriages. The Commission in its report submitted with the recommendation.

"Registration of marriage must be made compulsory as complex questions relating to the validity and existence of Nikah between certain parties arise very frequently in civil and criminal Courts. Difficulties arise in cases relating to a large amount of property dues the defendants as illegitimate sons; and the case is difficult to decide for lack of all documentary evidence"

Thus section 3 of the statute makes registration of every Muslim marriage compulsory and an elaborate procedure has been made to be followed strictly in registering such marriages.

Under this Act, there is also provision for the registration of divorces effected under Muslim law. A Nikah Registrar may register

<sup>1</sup> Gazette of Pakistan, Extra-ordinary, 20<sup>th</sup> June, 1956, P. 1208.

### 304 The Muslim Marriages and Divorces (Registration) Act, 1974

a divorce on application being made to him for such registration and the purpose of such registration is to avoid confusion and consequences of non-registration.

The Nikah Registrar shall register a marriage or divorce in the prescribed manner and he must maintain separate registers of marriages and divorces in prescribed forms as provided under section 8 of the Act. It further provides that the Registrar shall deliver to the parties concerned an attested copy of such registration made in the register of registration of marriage and divorce. Thus the Muslim Marriages and Divorces (Registration) Act, 1974 has provided for a documentary evidence by making provision for registration of all such marriages and divorces solemnized under Muslim law. In the absence of such provision, the question relating to the validity and the existence of marriage and marriage tie would arise frequently in civil and criminal courts.

No historical fact is available regarding the registration of marriage or divorce either during the period of the prophet Muhammad (Peace be on him) or during the time of the four Caliphs; and thus this Act has brought a great change in the Muslim law. During the early period of Islam, the problem relating to marriage and divorce was not so acute as is now-a-days. With the growth of population and change of social pattern, the problem has become too complex which necessitated this change in Muslim law. But nothing is to be found in this change which is in contravention with the Holy Quran or the *Sunna*. The Muslim Marriages and Divorces (Registration) Act, 1974 is, therefore, a clear departure from the earlier enactments. Disputes relating to marriages and divorces have been decreased after the enforcement of this Act. It is to be mentioned here that this Act does not say anything regarding the effects of non-registration of marriages or divorces.

## Chapter Twenty Five The Dowry Prohibition Act, 1980

(Act No. xxxv Of 1980)

The following Act of parliament received the assent of the President on 26<sup>th</sup> December, 1980 and is hereby published for general information:

(Act No. xxxv Of 1980)<sup>1</sup>

An Act to prohibit the taking or giving of dowry in marriages.

Whereas it is expedient to make provision to prohibit the taking or giving of dowry in marriages:

It is hereby enacted as follows-

### 1. SHORT TITLE AND COMMENCEMENT—

- (1) This Act may be called the Dowry Prohibition Act, 1980.
- (2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

### 2. DEFINITION—

In this Act, unless there is anything repugnant in the subject or context, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

- (a) by one party to a marriage to the other party to the marriage, or
- (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person:

at the time of marriage or at any time before or after the marriage as consideration for the marriage of the said parties but does not include dower or muhr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

<sup>1</sup> Published on 26<sup>th</sup> December, 1980 in the Bangladesh Gazette (Extra Ordinary)